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Supreme Court ^{of} the United States

OCTOBER TERM, 1944

WILLIAM LEE SMITH, *Petitioner,*

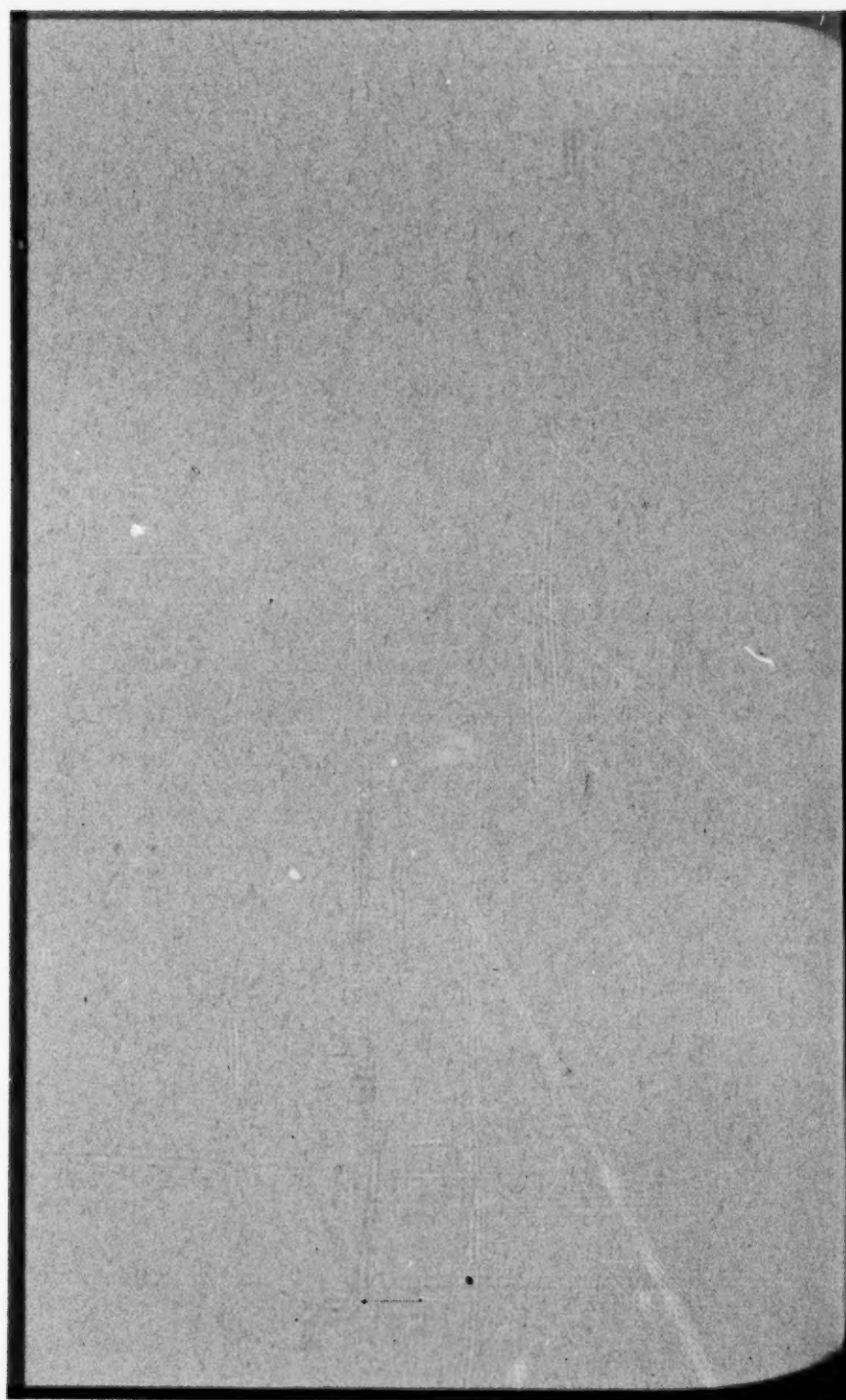
VERSUS

UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI and Supporting Brief.

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In the Supreme Court of the United States

OCTOBER TERM, 1944

No.

WILLIAM LEE SMITH, *Petitioner*,

vs.

UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, William Lee Smith, respectfully alleges:

A.

Summary Statement of the Matter Involved.

(1) Petitioner is now at liberty under bond. He is at present and has been since the day of trial, living at Braggs, Oklahoma. He is under sentence of eighteen months, for some offense, which neither he nor his attorneys have been able to ascertain. The judgment of the District Court of the United States, being:

“Conspiracy to embezzle and dispose of Government property, from November 1, 1943, to December 1, 1943 in Muskogee County, Oklahoma.”

An appeal was taken from this conviction to the Tenth Circuit Court of Appeals, Denver, Colorado. The conviction was affirmed by that court on October 26, 1944. A timely application for rehearing was filed, which application was received and considered by the court. The application for rehearing was denied November 27, 1944. An order denying motion to stay mandate was entered on December 2, 1944, and spread of record in Muskogee County on the 6th day of December, 1944.

(2) At the outset of the case the petitioner moved to quash the indictment on the grounds that the indictment rendered against this appellant did not sufficiently inform him of the offense charged to allow him to make the proper defense or to plead a former conviction in the event he was again charged with the same offense. The appellant was indicted and convicted under Title 18 United States Code Annotated; the indictment alleged conspiracy under Section 80, Title 18 USCA, but when the matter was raised by demurrer the reference to Section 80 was explained as merely a typographical or clerical error (Tr. 51) and that the conspiracy charged was made an offense by Section 88, Title 18 USCA (Tr. 51). The United States Attorney stated for the record that the indictment was intended to charge a conspiracy to violate Section 36 of the Criminal Code (Section 87, Title 18 USCA) (Tr. 51).

Judge MURRAH, in rendering his opinion for the Tenth Circuit Court of Appeals, states that this petitioner was convicted under Section 47 of the Criminal Code (Section 100, Title 18 USCA) (Tr. 53).

B.

Reasons Relied on for the Allowance of the Writ.

(1) Petitioner has been deprived of due process of law in that he has been denied the protection furnished him under the Sixth Amendment to the Constitution of the United States, the pertinent part of which reads as follows:

“In all criminal prosecutions, the accused shall enjoy the right * * * to be informed of the nature and cause of the accusation.”

A motion was made by petitioner to quash the indictment and at the conclusion of the testimony a motion was made for an instructed verdict.

(2) That the verdict is not supported by the evidence.

These matters were considered by the trial court and the Circuit Court of Appeals.

Wherefore, your petitioner prays that this Court, pursuant to United States Judicial Code, Section 240, as amended (Title 28 USCA Section 347 (a)), issue a writ of certiorari to review the judgment of the Tenth Circuit Court of Appeals, Denver, Colorado, affirming your petitioner's conviction for conspiracy to embezzle government property as aforesaid.

All of which is herewith respectfully submitted, this 26th day of December, 1944.

WILLIAM LEE SMITH, *Petitioner.*

By W. PERRY MILLER, *Attorney.*